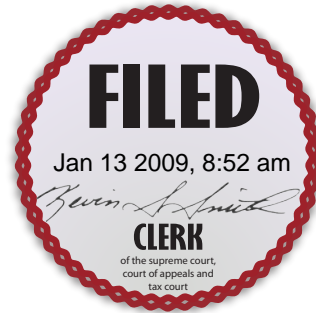


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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GEORGE F. MARTIN,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 18A02-0806-CR-493

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APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable John M. Feick, Judge  
Cause No. 18C04-0711-FB-30

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**January 13, 2009**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

George F. Martin (“Martin”) pleaded guilty in Delaware Circuit Court to Class B felony burglary with intent to commit criminal deviate conduct and Class C felony battery resulting in bodily injury. Martin was sentenced to an aggregate term of eighteen years. Martin appeals and argues that the trial court abused its discretion when it relied on an aggravator unsupported by the record in imposing his sentence.

We affirm.

### **Facts and Procedural History**

On November 13, 2007, J.C. was in her home with her two small children when she heard a noise on her front porch. She opened the door to find her neighbor, Martin, standing there, obviously drunk. He fell to the floor and as she attempted to help him up, Martin sat up and began to kiss and molest J.C. J.C. resisted him and told him that she needed to call her husband. Martin allowed J.C. to reenter the house where she called her husband and mother-in-law for help. She then called 911.

As J.C. was calling 911, Martin entered the house and again attacked her. J.C.’s uncle arrived to find Martin attacking J.C. The uncle pulled Martin off J.C. Martin pushed the uncle to the ground and began to hit, kick, and stomp on the uncle’s ribs, stomach, and face. Martin stopped the attack momentarily then returned to the assault on the uncle. Martin left the house.

When the police arrived, Martin returned to the scene and told the police that the uncle had attacked Martin and he wished to press charges. Martin was arrested and during that time he told the police that he had gone to the house to borrow a movie only to be attacked by the uncle in the alley behind the house. In a statement given to police

five days later, Martin claimed to have gone to the house to borrow a movie only to be attacked in the house by J.C.'s husband and uncle.

The State charged Martin with two counts of Class B felony criminal deviate conduct, Class B felony attempted criminal deviate conduct, Class B felony burglary, and Class C felony battery resulting in serious bodily injury. On April 9, 2008, Martin pleaded guilty to Class B felony burglary and Class C felony battery resulting in serious bodily injury.

On May 14, 2008, the trial court sentenced Martin to eighteen years for the Class B felony burglary and six years on the Class C felony battery resulting in serious bodily injury, sentences to be served concurrently. The trial court noted the following as mitigators: (1) that he pleaded guilty, (2) that he was twenty-one, and (3) that this was his first major felony conviction. The trial court found the following aggravators: (1) his criminal history, (2) prior unsuccessful attempts at rehabilitation through probation, (3) substantial degree of care and planning by Martin, (4) the facts are particularly heinous and disturbing, and (5) the offense was committed in front of two small children. The trial court also noted that Martin benefited from the plea agreement as the State dismissed three Class B felonies. Martin appeals.

### **Discussion and Decision**

Martin argues that the trial court abused its discretion by improperly finding an aggravator that was not supported by the record. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). Sentencing decisions rest within the sound discretion of the trial court. Id. at 490. "An abuse of

discretion occurs if the decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” Id. at 491 (citations omitted). A trial court can abuse its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. Id. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491.

The trial court considered the following aggravating circumstance: that the crime entailed a substantial degree of care and planning by Martin. Martin argues that this circumstance is unsupported by the record. We agree. While Martin apparently tried to cover up his actions by blaming the victims, this did not occur before the commission of the crimes but afterwards.

Regardless of the propriety or impropriety of this individual aggravator, the evidence presented supports the remaining aggravators. Martin’s criminal history consists of seven misdemeanors that included one conviction for domestic assault. Appellant’s App. p. 73. The offenses for which Martin was convicted were indeed heinous and disturbing. Martin attacked a mother with her children present with the

intent to commit criminal deviate conduct. He then viciously attacked her uncle who sought to intervene. Appellant's App. pp. 75-76.

We can confidently say that the trial court would have imposed the same sentence had it properly considered the sentencing factors. The trial court did not abuse its discretion in sentencing Martin to an eighteen-year term.

Affirmed.

BAILEY, J., and BARNES, J., concur.